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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 910 of 2011

- Sanjay Kannauje, age about 36 (35) years, son of Shri Rewaram Kannauje, Occupation – Supervisory under Contractor in Bhilai Steel Plant, R/o Mother Teresa Nagar, Camp-1, Bhilai Power House, District Durg (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through the District Magistrate, Rajnandgaon (C.G.)

---- Respondent

For Appellant : Shri Shashi Bhushan Tiwari, Advocate

For Respondent/State : Shri K.K. Singh, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra, J
Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board by Justice Gautam Chourdiya

09.06.2020

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 09.11.2011 passed by learned Additional Sessions Judge, Camp Dongargarh, District Rajnandgaon (C.G.) in Sessions Trial No. 05 of 2010, whereby the appellant stands convicted under Section 302 of IPC for committing murder of Ramesh Verma on 08.02.2010 and sentenced to undergo life imprisonment and fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for three months.
2. Case of the prosecution, in brief, is that on 08.02.2010 at 12:15 pm mereg intimation (Ex.-P/6) was lodged by Gajanand Kathpute (PW-3) in police station Dongargarh informing that one dead body of unknown person is found near pump house gate of Pragiya Hills. The Investigating Officer reached the place of incident, gave notice (Ex.-P/7) to Panchas and

prepared inquest (Ex.-P/8) on the body of the deceased in the presence of Gajanand Kathpute (PW-3) and other witnesses. The dead body of deceased- Ramesh Verma was sent for its postmortem examination to District Medical Officer, Dongargarh, where the postmortem examination was conducted by Dr. N. Sachdewa (PW-12), who prepared his report Ex.-P/15. As per postmortem report (Ex.-P/15), PW-12 found following injuries on the body of the deceased:

1. Body of the deceased was cold, and rigour mortis was present over the body.
2. Right portion of face was flattened and its frontal bone was fractured; one lacerated wound was present in size of 2 inch x ½ inch x 2 ½ inch and two small lacerated wound was also present on the head.
3. There was fracture on right zygomatic bone.
4. Upper & lower incisors teeth was broken.
5. Scar of old operation was present on right inguinal region (4 inch long).

Doctor (PW-12) opined that cause of death was head injury, mode of death was coma and duration of death was within 24-36 hours and it seems to be a case of assault & murder. He further opined that all the injuries were antemortem in nature and all viscera were preserved in two bottles and clothes of the deceased was preserved & sealed and handed over to concerned police officer.

3. During investigation, blood stained stone, white coloured cap, one empty bottle of Haywards beer, empty liquor bottle of 8PM liquor, one empty bottle of country made liquor, three plastic disposable glasses and six water pouches, four empty pouches of *Rajshri Gutkha*, one pair of slippers etc were seized from the place of occurrence vide Ex.-P/9. As per Ex.-P/6 merger intimation on 10.02.2010 at 19:40 hours F.I.R. (Ex.-P/26) was registered under Section 302 IPC in the police station Dongargarh by Inspector

Vishwas Chandrakar (PW-14) against the unknown person. Dead body of deceased Ramesh Verma was identified by PW-1 Jeevan Verma (brother of deceased), Lalita Verma (wife of deceased), Pushpa Verma (sister of deceased) and Radha Bai (mother of deceased) vide Ex.-P/1 & Ex.-P/4. During investigation, case diary statements of witnesses namely Chandu @ Jeevan Verma, Pushpa Verma, Harilal and Rakesh Verma vide Ex.-D/1, Ex.-D/2, Ex.-D/3 and Ex.-D/4 were recorded which revealed that accused/appellant Sanjay Kannauje was having illicit relation with Lalita Verma wife of deceased Ramesh Verma.

4. The allegation against the appellant is that due to enmity between him (appellant) and deceased, appellant Sanjay took deceased's friend juvenile (V) in his confidence and on 07.02.2010, the deceased was called by juvenile (V) to Bhilai Power House Railway Station and from where juvenile (V) and the deceased went to Dongargarh. Appellant Sanjay Kannauje stood with his motorcycle at Dongargarh railway station and from where, the appellant alongwith juvenile (V) and the deceased went to Pragiya Hills near pump house gate where they sat to drink liquor. Further allegation is that Juvenile (V) mixed the *sanan-tablet* (intoxicating drugs) in the liquor of the deceased. Thereafter, appellant Sanjay Kannauje administered intoxicating injection to the deceased. When the deceased was unconscious, appellant Sanjay Kannauje committed murder of the deceased by causing injury with the help of stone on his (deceased) head and both appellant and juvenile (V) returned to Bhilai by motorcycle of appellant. Appellant Sanjay Kannauje was taken into custody on 09.03.2010 and his memorandum statement (Ex.-P/18) was recorded wherein he disclosed as to the manner in which he committed murder of the deceased consequent to which one full-pant, one shirt and motorcycle were recovered from his possession vide Ex.-P/19. One empty pouch of *sanan-tablet* (intoxicating tablet) and one diary of deceased

Ramesh Verma were recovered from the possession of juvenile (V) vide Ex.-P/20. During investigation, the police also seized empty syringe and empty ampule of 2ml of Diazepam Injection from the place of occurrence vide Ex.-P/23. Seized articles were sent for FSL examination. The reports of which were filed as Ex.-P/25 according to which blood was found on Articles- 'A'-cement powder, 'C'-stone and 'D1'- shirt, 'D2'-baniyaan, 'D3'-underwear, 'D4'-full-pant of the deceased and 'E'-full-pant & 'F'-full pant of the appellant. Vicera was chemically examined and the Forensic Science Laboratory, Raipur in its report Ex.-P/26 (also marked FIR as Ex.-P/26) reported that cannabis & ethyl alcohol were found on Articles- 'A' & 'B' and cannabis was also found in Articles- 'G1' & 'I'.

5. After completion of usual investigation, the charge-sheet was filed against accused/appellant Sanjay Kannauje and the trial Judge framed the charge under Section 302 read with Section 34 of IPC against him. In order to prove guilt of appellant Sanjay Kannauje, the prosecution examined as many as 16 witnesses. Statement of appellant Sanjay Kannauje was recorded under Section 313 Cr.P.C. where he denied the circumstances appearing against him and pleaded innocence and false implication due to all the witnesses being related to the family of the deceased. Appellant Sanjay Kannauje examined one Tarak Satyadev as DW-1 in his defence.
6. Charge-sheet against co-accused juvenile (V) was filed before the Juvenile Justice Board, Rajnandgaon for separate trial.
7. The trial Court after hearing the counsel for the parties in the matter and considering the material available on record, by the impugned judgment convicted and sentenced the present appellant Sanjay Kannauje in the manner as described above, hence this appeal.
8. Learned counsel for the appellant submits that the prosecution has utterly failed to prove charge framed against the appellant under Section 302/34 of

IPC. In this case, there is no eyewitness; nor the appellant was last seen with the deceased near the place of occurrence or prior to the place of occurrence. He submits that no any admissible or legal evidence has been put forth by the prosecution regarding chain of circumstantial evidence to connect the appellant with the crime in question. He further submits that the seizure and memorandum of the appellant have no substance to prove the guilt of the appellant. He also submits that there is absolutely no motive proved by the prosecution as against the appellant and therefore, the entire case of the prosecution falls to the ground. The trial Court without appreciating the legal evidence available on record, only on the basis of conjecture and surmises convicted and sentenced the appellant, therefore, the conviction deserves to be set aside.

9. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that as per evidence available on record, the appellant is well known to the deceased and wife of deceased and he (appellant) had illicit relations with the wife of deceased, therefore, the appellant had motive to commit murder of the deceased. Further, he submits that the dead body of the deceased was found in Pragiya Hills near pump house, from where the empty syringe and empty ampule were recovered by the police apart from seizure of blood stained clothes of the appellant which was not explained by the appellant. Therefore, the trial Court has rightly convicted and sentenced the appellant in above manner.
10. We have heard learned counsel for the parties and have also perused the records of the trial Court.
11. Admittedly, the conviction of the appellant is based upon the circumstantial

evidence, his illicit relations with the wife of the deceased which furnished motive for him to commit the crime, memorandum statement of the appellant, seizure and FSL report.

12. It is not disputed by the parties that the death of the deceased was homicidal in nature and that fact is proved by PW-12 Dr. N. Sachdewa who conducted autopsy on the deceased and found injuries on the body of the deceased which have been mentioned in the para-2 of this judgment. PW-12 proved his report (Ex.-P/15), he opined that cause of death was head injury, mode of death was coma and duration of death was within 24-36 hours and it seems to be a case of assault & murder. PW-12 also answered the query vide Ex-P/16 that the injuries sustained by the deceased can be caused by the stone recovered from the place of occurrence vide Ex.-P/ and as per inquest (Ex.-P/8), the same fact is proved by the prosecution witnesses PW-3 Gajanant Kathpute.

13. PW-1 Jeevan Verma, brother of deceased, has identified the body as his brother Ramesh Verma vide Ex.-P/1 and after postmortem examination, he received the dead body of deceased on *supurdnama* vide Ex.-P/2 which bears his signature. PW-1 also identified the diary which belongs to the deceased and proved the same vide Ex.-P/3.

14. PW-2 Radha Verma is the mother of deceased. PW-2 stated that she was informed by Lalita Verma (wife of the deceased) that her (Lalita) husband was missing. PW-2 admitted in para-3 of her deposition that the relations between the deceased and his wife (Lalita) are cordial and no allegation made against the appellant by PW-2.

15. PW-3 Gajanand Kathpute has lodged the merg intimation (Ex.-P/6). PW-3 is the witness of inquest report (Ex.-P/8) which bears his signature and proved the same.

16. Now we consider the motive in this case. PW-1 Jeevan Verma (brother of

the deceased) has stated in para-6 of his deposition that there is no any dispute between the deceased and appellant Sanjay Kannauje and the relations between them are cordial. PW-1 further stated that the deceased always stated about the appellant that he (appellant) is very cooperative and without advice of the appellant, he (deceased) did not use to do any work. Looking to the case diary statement of PW-1 Jeevan Verma, it is clear that he never stated about any dispute between the appellant and the deceased. Jeevan Verma only stated that the deceased had informed him that his wife (deceased's wife) was having illicit relation with the appellant.

17. PW-4 Pushpa Verma is the sister of the deceased and she is the hearsay witness. She stated in her deposition that whatever she has told regarding death of the deceased, she had heard from the people. She further stated that marriage of the deceased was performed with Lalita on the choice of deceased. PW-4 never stated in her deposition about illicit relations between the appellant and deceased's wife.

18. PW-5 Menka is the friend of Lalita (deceased's wife) and she is the hearsay witness. In para-5 of her deposition, PW-5 admits that she heard about illicit relations of Lalita with the appellant. In para-6, PW-5 also admits that the deceased and his wife Lalita were living together happily. There is no any dispute proved by PW-5 regarding illicit relation of appellant with deceased's wife.

19. PW-8 Harilal Verma has stated in para-1 of his deposition that in the month of January the deceased had come to his (PW-8) house and stated that the character of his wife Lalita is not good and she was having illicit relations with the appellant. In his case diary statement (Ex.-D/3), PW-8 has stated that in the month of January, the deceased had visited his (PW-8) house to meet his (deceased) sister Pushpa. When PW-8 met the deceased, he (deceased) informed him that his (deceased) wife having illicit relations with

the appellant.

20. Husband of Pushpa namely Rakesh Verma (PW-15) who was also examined before the Court admits in para-16 of his deposition that he has no knowledge about illicit relations between the wife of deceased Lalita and the appellant. Therefore, looking to the case diary statement (Ex.-D/2) of Pushpa (sister of the deceased) and the evidence of PW-15 (brother-in-law of deceased) it is clear that both have not stated against the appellant regarding illicit relations between the appellant and the deceased's wife.

21. Suspicion howsoever strong cannot take place of actual proof of guilt of the accused. In the matter of ***Sujit Biswas v. State of Assam, AIR 2013 SC 3817***, the Supreme Court has held that suspicion, however, strong cannot take place of proof. Para 6 is quoted below :

“6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of

justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: *Hanumant Govind Nargundkar & Anr. v. State of M.P.*, AIR 1952 SC 343; *State through CBI v. Mahender Singh Dahiya*, AIR 2011 SC 1017; and *Ramesh Harijan v. State of U.P.*, AIR 2012 SC 1979)".

22. There was suspicion against the appellant that he had an illicit relation with the wife of deceased and on that account the appellant had committed murder of the deceased. However, suspicion howsoever strong cannot take place of actual proof of guilt of the accused. In the present case, prior to death of deceased Ramesh Verma, no any incident or dispute regarding illicit relations of the appellant and the deceased's wife Lalita arose between Lalita and the deceased. No report was made by the deceased to the Panchayat, nor any social meeting was ever convened in this regard. Therefore, neither the cogent or admissible evidence adduced by the prosecution to prove the alleged motive.

23. PW-11 Tarachand is the Patwari who prepared the spots map (Ex.-P/10 & Ex.-P/11) and proved by PW-3 Gajanand Kathpute and he has admitted his signatures over Ex.-P/10 & Ex.-P/11.

24. Ex.-P/18 memorandum statement of the appellant was recorded on 09.03.2010 in the presence of PW-13 Vikram Singh Verma and PW-15 Rakesh Verma and they supported Ex.-P/18 memorandum recorded by the police consequent to which one motorcycle, some empty pouch, clothes of the appellant etc were seized vide Ex.-P/19 & Ex.-P/20. PW-13 Vikram Singh Verma has stated in his deposition in para-10 that on 09.03.2010 the memorandum of the appellant was recorded by the police and on 10.03.2010, the appellant was interrogated and thereafter they visited the

place of occurrence (Pragiya Hills). If we consider memorandum statement (Ex.-P/18) which was recorded on 09.03.2010, the articles said to have been seized pursuant to the memorandum from the place of occurrence did not prove involvement of the appellant in the crime for the reason that the place of occurrence is easily accessible by anyone as the same is an open place and that syringe and empty ampule so found on the place of occurrence are easily available in the medical shops and the possibility of it being thrown there by someone cannot be ruled out. As per FSL report (Ex.-P/26), no any content of Diazepam was found on the viscera of the deceased, only ethyl alcohol and cannabis were found on the viscera. Therefore, the accused/appellant was using that syringe to inject the Diazepam in the body of the deceased is not proved by the prosecution. As per another FSL report (Ex.-P/25), only blood was found Articles- 'A'-cement powder, 'C'-stone and 'D1'- shirt, 'D2'-baniyaan, 'D3'-underwear, 'D4'- full-pant of the deceased and 'E'-full-pant & 'F'-full pant of the appellant, but whether Articles 'E'-full-pant & 'F'-full pant belong to the appellant, was not proved by the prosecution. Further, origin and group of the blood found on that Articles 'E'-full-pant & 'F'-full pant of the appellant was not proved by the prosecution.

25. In the present case, Lalita (wife of the deceased) has not been examined by the prosecution. Looking to the case diary statements (Ex.-D/1, Ex.-D/2, Ex.-D/3 & Ex.-D/4) of PW-1 Jeevan Verma, PW-4 Pushpa Verma, PW-8 Harilal and PW-15 Rakesh Verma, they are not reliable in the given facts and circumstances of the case. There are material contradictions and omissions in the case diary statements of PW-1 Jeevan Verma, Pushpa Verma, PW-8 Harilal and PW-15 Rakesh Verma.

26. In the present case, there is no eyewitness to the incident and the trial Court only on the basis of presumption of illicit relations of the appellant with the wife of deceased Lalita has convicted the appellant. To bring home the

charge for committing murder on the basis of circumstantial evidence, the prosecution has to prove chain of circumstantial evidence which only proves the guilt of the accused to the exclusion of any other person who might have committed the crime. The principle has been succinctly laid down by the Supreme Court in ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116***, wherein it has underlined the conditions, which must be fulfilled for convicting an accused on the basis of circumstantial evidence and held in para-153 as under:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and “must be or should be proved” as was held by this Court in *Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622)* where the following observations were made:

'Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.'

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the

conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

27. In view of the above, we are not convinced that the prosecution has proved its case beyond reasonable doubt against the accused/appellant, neither last seen of the appellant with the deceased is proved nor the FSL reports are connecting the appellant with crime in question. He deserves to be acquitted by giving him benefit of doubt. Accordingly, we set aside the impugned judgment of conviction and acquit the accused/appellant of the charge under Section 302 IPC. It is also stated that the appellant is on bail since 17.02.2012, therefore, his bail bonds shall continue for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

28. In the result, the instant criminal appeal is allowed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge